



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-E-S-

DATE: APR. 20, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Venezuela currently residing in that country, has applied for an immigrant visa. A foreign national seeking to be admitted to the United States as an immigrant must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence and seeks a waiver of that inadmissibility. Section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant did not establish, as required, that his spouse would experience extreme hardship if he is denied admission to the United States.

On appeal, the Applicant submits additional evidence and asserts that his spouse would experience extreme hardship if he is denied admission to the United States.

Upon *de novo* review, we will sustain the appeal.

I. LAW

A foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i). A foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii).

There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national, and decades of case law have contributed to its meaning. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N

Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent’s parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

Once the foreign national demonstrates the existence of the required hardship, he or she must then show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(a)(9)(B)(v) of the Act. When exercising our discretion, we “balance the adverse factors evidencing a [foreign national’s] undesirability as a permanent resident with the social and humane considerations presented on the [foreign national’s] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996)(citations omitted).

II. ANALYSIS

The issues raised on appeal are whether the Applicant’s qualifying relative, his U.S. citizen spouse, would experience extreme hardship if the Applicant is denied admission and whether he merits a favorable exercise of discretion. On appeal, the Applicant submits additional evidence, and the record now includes, but is not limited to, statements from the Applicant and his spouse, statements from the Applicant’s children, a psychological evaluation, country information on Venezuela, financial records, and statements from family members and friends.

The Applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act for departing the United States after accruing more than one year of unlawful presence, and he does not contest that finding on appeal.¹ We find that the Applicant has established extreme hardship to his spouse and that he merits a favorable exercise of discretion.

¹ The Applicant arrived in the United States on November 21, 2000, in transit without visa status. He was permitted to leave the transit area of the airport and did not return for his scheduled flight to Mexico, but instead remained in the United States without authorization. He was ordered removed in [REDACTED] 2009, and he departed the United States on [REDACTED]

The Applicant asserts that his spouse would experience emotional and psychological hardship if she remained in the United States without him. The Applicant's spouse stated in her psychological evaluation that she feels tense, irritable, and tearful and has had suicidal thoughts, and her health would deteriorate significantly if the Applicant is not allowed to return to the United States. The psychologist diagnosed the Applicant's spouse with Major Depressive Disorder, Recurrent Episode, Severe Without Psychotic Features, and Generalized Anxiety Disorder, With Panic Attacks. The evaluation lists some of her symptoms, including insomnia, feelings of helplessness, and passive suicidal ideation.

The Applicant asserts that his spouse would experience financial hardship if she remained in the United States separated from him. Joint income tax returns filed when the Applicant resided in the United States indicate that he had a remodeling and construction business that was the source of the family's income. The Applicant states that because of his departure, his business ceased operations and their home was lost to foreclosure. He claims that his spouse cannot work due to her depression and that she and their children live with her sister and her family. The Applicant's spouse stated in her psychological evaluation that the Applicant paid for their mortgage, utilities, car payments, and children's activities when he resided in the United States.

The Applicant contends that his spouse is experiencing hardship from seeing the difficulties their children, who are 12 and 14 years old, are facing without him. The Applicant states that his children miss him, the emotional effects of the family's separation on their children is exacerbating his spouse's condition, and they are reluctant to visit him due to the hardships they have experienced during past visits to Venezuela. The Applicant's spouse stated in her psychological evaluation that he was a very involved father and provided guidance and advice to their children. Psychological evaluations submitted to the record also describe the difficulty and emotional hardship the children are experiencing, which includes resentment towards their mother for not being able to provide like the Applicant and the lack of privacy and space at their aunt's residence.

The record reflects that the Applicant's spouse is experiencing significant emotional and psychological hardship without the Applicant. In addition, she is experiencing difficulty raising her children without the Applicant and in seeing them experience hardship without their father. The record also establishes that the Applicant was the family's main financial provider, they lost their home to foreclosure, and his spouse is experiencing financial hardship without him. These hardships, when considered in the aggregate, go beyond the common results of separation from a spouse, and we find that the Applicant's spouse would experience extreme hardship if she remains in the United States without the Applicant.

The Applicant asserts that his spouse would experience hardship upon relocation to Venezuela due to current conditions there, separation from her ties in the United States, and her lack of ties to Venezuela. The Applicant's spouse states that she is originally from Colombia, she has resided in

the United States for over 30 years, her mother and three siblings reside in the United States, and the Applicant's family resides in the United States.

The Applicant asserts that Venezuela is on the brink of collapse and is headed towards a dictatorship, and the government has seized most private industries. The Applicant states that recent revolts have made the country dangerous, the United States has mandated U.S. personnel to evacuate, commercial airlines have suspended flights there, and security forces have arrested U.S. citizens. The current U.S. Department of State Travel Advisory for Venezuela states that violent crime is common; U.S. citizens have been arbitrarily detained for long periods; there are shortages of food, water, and medicine throughout much of the country; and political rallies occur daily and typically elicit a strong police and security response.

The Applicant further states that after his departure in 2012, his family briefly relocated to Venezuela, and his children were denied school admission due to their U.S. citizenship and were bullied and his family was harassed due to their ties to the United States. He states that food was scarce, water and electricity services were inconsistent, and medical services and medicine were in short supply. He also states that he started a business and closed it due to extortion from criminals and police. The Applicant's spouse stated in her psychological evaluation that while in Venezuela her family was followed by men at a museum, the Applicant overheard them saying they were going to kidnap their children, and they returned to the United States two days after this incident.

The record reflects that the Applicant's spouse and her children would experience hardship due to current political and economic conditions in Venezuela, and the record further indicates that the family experienced difficulties when they previously attempted to reside there with the Applicant. In addition, the Applicant's spouse has resided in the United States for over 30 years, she has strong family connections here, and she does not have ties to Venezuela, and separation from her family and other ties in the United States would thus result in emotional hardship. These hardships, when considered in the aggregate, go beyond the normal results of relocation to a foreign country, and we find that the Applicant's spouse would experience extreme hardship if she relocated to Venezuela.

The evidence, considered both individually and cumulatively, establishes that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission. In addition, the balancing of the positive equities in this case against the negative factors warrants the favorable exercise of our discretion. Accordingly, we withdraw the Director's decision, as the waiver application merits approval.

ORDER: The appeal is sustained.

Cite as *Matter of G-E-S-*, ID# 1036944 (AAO Apr. 20, 2018)